U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 21 February 2007

In the Matter of

UNITED STATES DEPARTMENT OF LABOR, EMPLOYEE BENEFITS SECURITY ADMINISTRATION
Complainant

Case No. 2005-RIS-00020

v.

SYNERGY MANUFACTURING TECHNOLOGY, INC.
Respondent

Mary F. Williams, Esq.
Washington, D.C.
For the Complainant

Before: JEFFREY TURECK
Administrative Law Judge

DECISION AND ORDER GRANTING SUMMARY JUDGMENT

This matter concerns a $50,000.00 civil penalty assessed under §502(c)(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA" or "the Act"), and its implementing regulations. *See* 29 U.S.C. §1132(c); 29 C.F.R. §§2560.502c-2 and 2570.60-71. Complainant, the United States Department of Labor, Employee Benefits Security Administration ("EBSA" or "complainant") assessed the penalty against respondent, Synergy Manufacturing Technology, Inc. ("Synergy" or "respondent"), as administrator for the Synergy 401(k) plan due to Synergy's failure to include the report and opinion of an independent qualified public accountant ("IQPA report") with its 2002 Annual Report of the plan, as required by ERISA §103(a)(3)(A), 29 U.S.C. §1023(a)(3)(A). Respondent requested a hearing with this Office for waiver or reduction of the penalty. EBSA has filed the instant motion for summary decision, which is currently pending before me.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The material facts in this case are not in dispute. In 2002, Synergy was the sponsor of the Synergy Manufacturing Technology, Inc. 401(k) plan ("plan") (EBSA Exhibit 6, Form 5500, Part II, lines 1a-2a). A natural person, Carl E. Hicks, served as the plan's administrator (*see id*.). At the beginning of 2002, the plan had a total of 360 participants and held pension benefits in trust (*id*., lines 6, 8, 9a-9b). On or about October 15, 2003, Synergy filed Form 5000, the 2002

"Annual Return/Report of Employee Benefit Plan" ("annual report") with EBSA without attaching an IQPA report (*see generally id*.).

By letter dated December 25, 2003, EBSA notified Synergy that it had received the Form 5500, but that the IQPA report was not attached (EBSA Exhibit 10). The letter instructed Synergy to send the IQPA report to EBSA within 30 days of the letter date so that the company's 2002 annual report could continue to be processed (*id.*). Having received no reply from Synergy, EBSA again notified the company by letter dated February 11, 2004 that it still had not received the IQPA report and requested that Synergy send the report within 30 days of the letter date (EBSA Exhibit 11). Both letters warned of the potential for IRS and DOL penalties for noncompliance and provided a toll-free telephone number and mailing address for questions. (*id.*). Synergy responded to EBSA by letter dated March 12, 2004 (*id.*). As a result of the company's "financial difficulties," Synergy's "outside" accountant was delayed in completing the IQPA report (*id*.). The letter represented that the accountant expected to complete its audit of Synergy's plan by April 30, 2004, and that upon completion, Synergy would "promptly" remit the IQPA report to EBSA (*id*.).

By letter dated May 6, 2004, EBSA notified Synergy that it had still not received the plan's IQPA report (EBSA Exhibit 1). The letter also notified Synergy that EBSA considered the IQPA report "material information" under §502(c)(2) of ERISA and warned that under §§104(a)(4), 104(a)(5), and 502(c)(2) of ERISA, a failure to provide EBSA with material information constituted grounds for rejection of the plan's annual report (*id.*). The letter gave Synergy 15 days either to explain to EBSA why the 2002 annual report was correct as filed or to file an amended Form 5500 (*id.*). No response was forthcoming from Synergy.

On June 23, 2004, EBSA issued a notice of rejection ("NOR"), rejecting Synergy's 2002 annual report on account of the company's failure to attach an IQPA report (EBSA Exhibit 2). The NOR informed Synergy that an annual report that is rejected under §104(a)(4) of ERISA for failure to provide material information is treated by DOL as a failure to file an annual report unless Synergy filed an amended annual report within 45 days of the date of the NOR (*id.*). The NOR warned that the Secretary of Labor could assess a civil penalty of up to $1,100.00 per day from the date on which the annual report was due (without regard to any extensions) if Synergy did not file an amended report within the 45-day time limit. Synergy did not file an amended report within the 45-day time limit.

On September 20, 2004, EBSA issued a notice of intent to assess a penalty ("NOI") against Synergy in the amount of $50,000.00, pursuant to §502(c)(2) of ERISA (EBSA Exhibit 3). The NOI informed Synergy that its 2002 annual report was deficient because the company failed to attach an IQPA report and that Synergy had failed to submit an amended filing to EBSA within the 45-day penalty-free timeframe discussed in the NOR (*id.*). The NOI further informed Synergy that EBSA assessed a penalty of $150.00 per day for the 417 days from August 1, 2003 until September 20, 2004 that the IQPA report was missing from the annual report (*id.*). The total penalty accrued was $62,550.00, but the NOI informed Synergy that EBSA would assess a maximum penalty of $50,000.00 (*id.*). The NOI directed Synergy to file a Statement of Reasonable Cause within 35 days of the date of the NOI in which the company was to state that complied with ERISA §101(b)(1) or was to state any mitigating circumstances regarding either

the degree or willfulness of its noncompliance and set forth facts as to why the penalty, as calculated, should either be reduced or not assessed (*id.*). The NOI warned Synergy that no extensions of time for response were available (*id.*).

Synergy filed its Statement of Reasonable Cause with EBSA by facsimile dated October 21, 2004 (EBSA Exhibit 4). The company admitted that it had filed the Form 5500 without attaching the IQPA report and stated that it would file the IQPA report within 45 days (*id.*). As a mitigating circumstance, Synergy stated that it was the company's "intention" to file the IQPA report with its Statement of Reasonable Cause, but that "many of the 2002 records were not available due to consolidation of subsidiary locations" (*id.*). The letter stated further that "[t]he records have been requested from the bank and payroll service that was used during 2002" (*id.*). On account of this mitigating circumstance, Synergy requested that the penalty not be assessed. Synergy filed an amended 2002 annual report with the IQPA report attached on or about December 6, 2004 (*see Answer* dated Jan. 3, 2005).

On December 6, 2004, EBSA issued a Notice of Determination on the Statement of Reasonable Cause ("NOD") (EBSA Exhibit 5). The NOD determined that Synergy had failed to present reasonable cause for its initial failure to timely file the annual report and for its subsequent failure to timely file an amended report (*id.*). The NOD stated further that the unavailability of the 2002 records due to consolidation of a subsidiary did not constitute reasonable cause for failure to timely file the annual report, and that the plan administrator bore the fiduciary responsibility for assuring that Synergy met ERISA's reporting requirements (*id.*). Finally, the NOD warned Synergy that it had 35 days to file a request for a hearing and answer with this Office, and that if it did not file for a hearing, that the NOD would become a final order.

On January 6, 2005, Synergy filed an answer and requested a hearing with this Office. Synergy stated in its answer that it had encountered "difficulty" in locating certain company records, and that it had experienced financial difficulties that had forced the company to close several locations and file for bankruptcy. Specifically, the company's chief financial officer had passed away, and the company was unable to fill the position until later in 2002. A controller of one of the company's consolidated branches departed from the company in 2003, and the answer states that this controller's departure caused "considerable difficulty," because the departed controller had control of necessary records and was "not helpful" in directing the company to those records. The answer also states that the company filed an amended Form 5500 on Monday, December 6, 2004 based on the company's understanding that the "general instructions" for the Form 5500 allowed a company to file an annual report on the next business day if the due date for a filing fell on a weekend. Synergy reasoned that as the "due date of 45 days from October 21st was Sunday[,] December 5th," it timely filed the amended annual report when it filed on Monday, December 6th. Finally, the answer requests abatement of the penalty on the grounds that the company is attempting to emerge from bankruptcy and that it has worked "diligently to correct the filing while focusing on keeping the Company solvent and its remaining employees with a quality workplace."

The case was docketed in this Office, and the parties filed their pre-hearing exchanges. On August 23, 2005, complainant notified this Office that the parties had reached a settlement.

Attached to this notice was a copy of the proposed settlement agreement. The notice stated that the agreement would be executed and submitted to me within three weeks. But I did not receive an executed settlement agreement after the passage of this time. Subsequently, I was informed by complainant's current counsel that complainant's previous attorney retired due to serious medical problems. Complainant's current counsel asked for more time to submit the settlement agreement, and I granted her request. When an executed agreement was not submitted, I requested that complainant's counsel file a status report.

In her *Status Report* of January 13, 2006, complainant's counsel stated that the executed settlement agreement had not been submitted to this Office because respondent had not paid the reduced civil penalty that it was required to pay as a condition precedent to complainant's acceptance of the agreement. Counsel stated further that after numerous unsuccessful attempts to contact respondent, she had been informed by Carl Hicks that all stock in Synergy had been sold to a successor in interest and that all liabilities had been assumed by that successor (*see also* EBSA Exhibit 9). Complainant requested that the matter be rescheduled for a hearing or that a default judgment be entered against respondent for the full amount of the civil penalty assessed by EBSA (*i.e.*, $50,000.00). However, as respondent's failure to comply with the terms of the settlement agreement is not a ground for a default judgment, I ordered respondent to show cause why the hearing should not be rescheduled (*Order to Show Cause* dated Jan. 18, 2006). I further ordered respondent to provide the name and address of any successor company and requested that company to indicate whether it agreed it was financially responsible for any penalties ultimately imposed in this matter. No response to the show cause order was received, and on February 27, 2006, I rescheduled the hearing (*Notice Rescheduling Hearing and Prehearing Order* dated Feb. 27, 2006).

Complainant filed the instant motion for summary decision on April 25, 2006. On May 4, 2006, an attorney for Carl Hicks made an initial appearance, citing complainant's request for summary decision against Mr. Hicks.[1] On May 12, 2006, I granted complainant's motion for a continuance. On September 13, 2006, I requested a status update from complainant's counsel. In a rather vague answer, complainant's counsel represented that she was then in the process of conferring with EBSA's Office of the Chief Financial Accountant and would notify this Office when the accountant had made a final decision with respect to respondent's assets. I waited several months for an update from counsel, but none was forthcoming. On February 1, 2007, I directed complainant's counsel to file a status update. In her *Status Report* of February 5, 2007, complainant's counsel states that respondent's sole shareholder, Mr. Hicks, sold the assets of the company, but the report does not identify the purchaser. The report also states that Mr. Hicks represented to EBSA that he had a negative net worth and that he was unable to pay for any civil penalty ultimately assessed in this case. Complainant asserts, however, that neither the sale of Synergy nor Mr. Hicks' negative net worth obviates respondent's reporting obligations under ERISA. Accordingly, complainant requests summary decision in its favor. For the reasons set forth below, I find that complainant is entitled to summary decision in its favor.

[1] EBSA requests that Carl E. Hicks be held "personally, jointly and severally liable" for the penalty assessed against respondent in this case (*Memorandum in Support of Motion for Summary Decision* at 14).

Discussion

Standard for Summary Decision

The Rules of Practice and Procedure for administrative hearings before the Office of Administrative Law Judges provide that an administrative law judge "may enter summary judgment for either party if the pleadings, affidavits, material obtained by discovery or otherwise … show that there is no genuine issue as to any material fact and that a party is entitled to summary decision." 29 C.F.R. §18.40(d). In civil penalty proceedings under § 502(c)(2) of ERISA, where "no issue of a material of fact is found to have been raised, the administrative law judge may issue a decision which, in the absence of an appeal … shall become a final order [of the Department of Labor]." 29 C.F.R. §§2570.67(a)(1). The party who files a motion for summary judgment has the initial burden of demonstrating an absence of evidence to support the nonmoving party's case. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). Once the moving party has properly supported its motion, the burden shifts to the non-moving party to show that there is a genuine issue of material fact left for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In evaluating a motion for summary decision, an administrative law judge is to review the factual evidence in the light most favorable to the non-moving party. *Stauffer v. Wal-Mart Stores, Inc.*, ALJ Case No. 99-STA-21, ARB No. 99-107, Decision and Order of Remand (Nov. 30, 1999). However, if the non-moving party fails to make a showing sufficient to establish the existence of an element of his case, then the moving party will be entitled to summary decision. *See Celotex*, 477 U.S. at 322-23.

Regulatory Framework

ERISA protects the security of employees and dependents affected by employee benefit plans by requiring administrators of covered employee welfare and pension plans[2] to comply with extensive reporting and disclosure provisions. *See* 29 U.S.C. §§1001, 1021-25. ERISA §101(b)(1) requires the administrator[3] of a plan to file an annual report of the plan with the Secretary. 29 U.S.C. §1021(b)(1). The annual report is to include the information required by ERISA §103, 29 U.S.C. §1023. ERISA §103 provides that a plan administrator of an employee benefit plan "shall engage" an independent qualified public accountant to conduct an examination of the plan's books and records to enable the accountant to form an opinion as to whether the financial statements and schedules required to be included in the annual report "are presented fairly in conformity with generally accepted accounting principles." 29 U.S.C. §1023(a)(3)(A). The IQPA report "shall be made part" of the plan's annual report, which is to be filed with the Secretary not more than 210 days after the close of a plan year. *Id.* §§ 1023(a)(3)(A) and 1024(a)(1).

If the Secretary determines that the annual report submitted by the plan administrator is either incomplete or contains a material qualification in the accountant's opinion, she is

[2] *See* 29 U.S.C. §§1002(1), 1002(2)(A), and 1003(a)(1).

[3] A plan administrator is either the person specifically designated by the terms of the plan's operating instrument, or, in the absence of such designation, the plan's sponsor. 29 U.S.C. §1002(16)(A)(i) and (ii).

empowered to reject the annual report. ERISA §104(a)(4), 29 U.S.C. §1024(a)(4). If the Secretary rejects an annual report as incomplete or containing a material qualification in the accountant's opinion, and a revised filing is not made within 45 days after the Secretary makes this determination, she is further empowered to retain an independent qualified public accountant to perform the required audit and to bring an action for appropriate legal or equitable relief. ERISA §104(a)(5), 29 U.S.C. §1024(a)(5). Pursuant to §502(c)(2), 29 U.S.C. §1132(c)(2), the Secretary retains the enforcement authority to assess civil penalties of up to $1,100.00 per day[4] from the date of a plan administrator's failure or refusal file an annual report required to be filed with the Secretary for those annual reports due after December 31, 1987. When the Secretary rejects an annual report under ERISA §104(a)(4), that rejected annual report is to be treated as if it had not been filed. ERISA §502(c)(2), 29 U.S.C. §1132(c)(2).

Assessment of the penalty under §502(c)(2) is guided by the regulations set forth at 29 C.F.R. §2560.502c-2. The plan administrator is responsible for filing an annual plan report meeting the requirements of ERISA §101(b)(1) and bears the liability for civil penalties assessed by EBSA[5] for failure or refusal to file a compliant annual report. 29 C.F.R. §2560.502c-2(a). EBSA is to consider "the degree and/or willfulness" of the administrator's failure or refusal to file the annual report in making its penalty determination. *Id.* §2560.502c-2(b)(1); *see also* H.R. Conf. Rep. 100-495, at 889 (1987) (providing that penalties reflect the "materiality" of the failure). EBSA must provide the plan administrator with written notice indicating its intention to assess a penalty and inform the administrator of the penalty amount, the period of time to which the penalty applies, and the reason or reasons for the penalty. 29 C.F.R. §2560.502c-2(c).

Upon the issuance of the notice of intention, part or all of a penalty may be waived upon a showing by the plan administrator, within 35 days of the service of the notice, that there was reasonable cause for the failure to file a compliant annual report. 29 C.F.R. §§2560.502c-2(e) and 2560.502c-2(i)(2). Although the regulations provide that the statement of reasonable cause must be made in writing, under penalty of perjury, and must "set forth all the facts alleged as reasonable cause for the reduction or non-assessment of the penalty," they are flexible and do not define particular circumstances under which reasonable cause may exist. 29 C.F.R. §§2560.502c-2(e). Such flexibility ensures that "appropriate consideration is given to the *good faith* and *diligent* efforts by the [plan] administrator to comply with the annual reporting requirements." *Dep't of Labor, EBSA v. Callaghan & Callaghan, Inc.*, 2005-RIS-00099, at 3 (ALJ Apr. 24, 2006) (emphasis added).

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[4] While the text of the Act provides a limit of $1,000.00 per day, this amount is subject to inflation-based adjustments. Section 31001(s) of the Debt Collection Improvement Act of 1996 amended the Federal Civil Penalties Inflation Adjustment Act of 1990 to require that the head of each Federal agency adjust civil monetary penalties subject to its jurisdiction for inflation. 29 C.F.R. §2575.100. The regulations now provide that the maximum civil penalties assessed under ERISA §502(c)(2) are increased from $1,000.00 per day to $1,100.00 per day for violations occurring after July 29, 1997. *Id.* §2575.502c-2. The NOR issued by EBSA in this case warned Synergy that the Secretary could assess a civil penalty of up to $1,100.00 per day from the date on which the annual report was due (EBSA Exhibit 2).

[5] Secretary of Labor Order 1-2003 delegated the Department's ERISA enforcement responsibilities to EBSA. *See also* Secretary of Labor Order 1-87 (April 13, 1987).

After a review of all of the facts alleged in support of penalty waiver, EBSA is to notify the administrator in writing of its determination. 29 C.F.R. §2560.502c-2(g). The determination notice becomes the final order of the Secretary within 45 days of the notice service date unless, within 35 days of the service date, the administrator requests a hearing with this Office in accordance with the procedures outlined at 29 C.F.R. §§2570.61-.71 and 29 C.F.R. §18.4. *Id*. §§2560.502c-2(h) and 2560.502c-2(i)(2).

Respondent's Failure to File the IQPA Report

In its answer and request for a hearing, respondent agrees that an IQPA report was required to be attached to the Form 5500 containing the company's 2002 annual report of the plan. ERISA mandates that complete annual reports be filed with the Secretary within 210 days after the close of a plan year. In this case, a complete annual report for the 2002 plan year was due no later than July 31, 2003 (*see* EBSA Exhibit 3). Respondent admits that it did not attach an IQPA report to the original Form 5500. Further, respondent's amended annual report containing the IQPA report was not filed with EBSA until on or about December 6, 2004 (*see Answer* dated Jan. 3, 2005). Accordingly, I find that respondent failed to comply with ERISA §103 by failing to include with its original submission of the 2002 annual report the opinion of an independent qualified public accountant. Respondent further failed to submit the IQPA report within the timeframes allotted in complainant's request letters of December 25, 2003, February 11, 2004, and May 6, 2004. Respondent's failures rendered the annual report incomplete and properly rejected by EBSA. As an annual report that is rejected by EBSA as incomplete may be treated as if it had not been filed, civil penalties upto the amount of $1,100.00 per day were properly assessable against the plan administrator. Respondent makes no argument that it was not afforded all of the procedural opportunities under ERISA and the implementing regulations to cure the annual report by filing the IQPA report without incurring a penalty. Based on the undisputed facts, I find that EBSA followed the applicable procedures and provided respondent with the appropriate notices and opportunities to cure its filing deficiency without penalty. Thus, the only remaining question is whether Synergy has presented reasonable cause for its failure to file the IQPA report.

Reasonable Cause

Unless EBSA has acted in an arbitrary, capricious, or unreasonable manner, an administrative law judge generally will not disallow a penalty assessed by the agency for failure to file a complete annual report in a timely manner. *See e.g.*, *Dep't of Labor, PWBA v. Sociedad Para Asistencia Legal Money Purchase Plan*, 1994-RIS-00062, at 3 (ALJ Mar. 29, 1995); 5 U.S.C. §706(2); *see also Northwestern Inst. of Psychiatry v. Martin*, No. CIV. A. 92-0321, 1993 WL 52553, at * 3 (E.D. Pa. Feb. 24, 1993). After providing respondent with notice of its intent to assess the penalty, EBSA retained the discretion to determine that all or a part of the penalty should not be assessed upon Synergy's showing that reasonable cause existed for the penalty's reduction or abatement. In its Statement of Reasonable Cause, Synergy argued that consolidation of the company's subsidiary locations caused year 2002 records to be unavailable (EBSA Exhibit 4). The company stated that it had requested those records from its bank and payroll service and argues that this circumstance mitigates its failure to timely file the IQPA report. EBSA

determined that unavailability of records on account of a subsidiary's consolidation would not constitute reasonable cause to abate or reduce the penalty.

But as ERISA places the responsibility for timely and accurate filing of the annual report on the plan administrator, it was respondent's responsibility to timely procure the necessary financial and payroll records. Respondent's statement does not explain how the consolidation of some of the company's subsidiary locations made the necessary records "unavailable." And without more in the way of explanation or elaboration of the circumstances surrounding the unavailability of these records, I cannot conclude that EBSA acted unreasonably in determining that no reasonable cause existed to waive or abate the penalty.

In its answer and request for a hearing, Synergy shades the facts it asserted in its Statement of Reasonable Cause in a different light. It states that it had "difficulty" procuring the records at issue and that the company filed for bankruptcy and closed several locations. The answer states that Synergy's chief financial officer died and that the controller from one of its consolidated branches left the company. The answer also states that the chief financial officer position was not able to be filled until a later date in 2002 and that the departed controller "was not helpful" in directing the company to the records necessary for completing the IQPA report. But Synergy did not assert these circumstances to EBSA in its Statement of Reasonable Cause. To the extent that these additional factors may present reasonable cause, respondent may not rely on them now as a basis for a finding on my part that EBSA acted unreasonably or arbitrarily in refusing to reduce or waive the penalty. Additionally, even if respondent had presented these circumstances to EBSA, its attempt to pin the company's failure to timely file the IQPA report on the tail of a deceased corporate officer or a departed controller would not demonstrate good faith or diligence in respondent's performance of its duties as plan administrator. Nor would these factors present reasonable cause for the more than 16-month delay in filing the IQPA report. Further, Synergy's misunderstanding concerning the due date for the annual report does not render its amended report timely filed.

Finally, EBSA states that the penalty it imposes for a missing or deficient accountant's report is $150.00 per day for the total number of days the report is missing from the annual report; in this case, the penalty amounted to $62,550.00 and was capped at $50,000.00. This *per diem* penalty is well below the maximum of $1,100.00 per day that the Secretary is authorized to assess under §502(c)(2) of ERISA. Although respondent eventually filed a compliant annual report with the IQPA report attached, it has not put forth any facts to suggest that EBSA acted outside of the scope of its authority or was unreasonable in assessing these penalties. I conclude that EBSA acted within its scope authority and did not act in an arbitrary, capricious, or unreasonable manner in assessing the $50,000.00 penalty against respondent.

Liability of Carl E. Hicks

Complainant requests that Carl Hicks be held "personally, jointly and severally liable" for the payment of the penalty in this case (*Memorandum in Support of Motion for Summary Decision* at 14-15). Complainant states that Mr. Hicks personally sold Synergy to a successor (EBSA Exhibit 9) and that he signed the Form 5500 as the plan administrator (EBSA Exhibit 6). Complainant argues that Mr. Hicks appears to be "seeking to avoid liability by all means" and

points to his refusal to execute the settlement agreement and failure to respond to my orders as evidence of this avoidance (*Memorandum in Support of Motion for Summary Decision* at 15).

First, I note that Mr. Hicks's failure to execute a settlement agreement is not evidence that he is seeking to avoid any liability he may have with respect to this case; no one is *required* to settle a case. But to the extent the draft settlement agreement may be relevant, it should be noted that Carl Hicks was not listed as a party. Second, the respondent in this case is a corporation - Synergy Manufacturing Technology, Inc. Prior to the imposition of any liability arising from this matter, Mr. Hicks would be entitled to notice and an opportunity to be heard. Complainant could have requested that I join Mr. Hicks as a party to this case, but it did not do so. Third, Synergy is the entity that is listed on the 2002 annual report as the plan's sponsor (EBSA Exhibit 6, Part II, line 2a). ERISA provides that the plan administrator is the person or entity specifically designated by terms of the plan's operating instrument. In the absence of such designation, the plan administrator is the plan's sponsor. The operating instrument for Synergy's plan was not included with any of the pleadings or other documents submitted by the parties. Further, in the "Notes to Financial Statements" that Synergy includes with the amended 2002 annual report, Synergy states that the Board of the Directors of the company administers the plan (*see Answer* dated Jan. 3, 2005). Accordingly, Synergy, not Mr. Hicks, is the administrator of the plan and the proper party liable for the payment of the civil penalties imposed in this case.

For the reasons articulated, I find that EBSA's assessment of a $50,000.00 civil penalty against Synergy for the failure to file a complete annual report for 2002 was reasonable and not an abuse of discretion.

ORDER

IT IS ORDERED that complainant's motion for summary decision is **GRANTED**.

IT IS FURTHER ORDERED that respondent, Synergy Manufacturing Technology, Inc., shall pay the U.S. Department of Labor a civil penalty in the amount of $50,000.00 for violations of the Employee Retirement Income Security Act of 1974. Respondent is directed to pay the penalty within 30 days from the date of service of this decision. Respondent's payment shall be sent to the U.S. Department of Labor, ERISA Civil Penalty Collections, P.O. Box 100240, Atlanta, Georgia 30384-0240. Amounts not paid by that time shall be subject to penalties and interest provided for in the Act and regulations.

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JEFFREY TURECK
Administrative Law Judge

NOTICE OF APPEAL RIGHTS: Pursuant to 29 CFR §2570.69, a notice of appeal must be filed with the Secretary of Labor within 20 days of the date of issuance of this Decision and Order or the decision will become the final agency action within the meaning of 5 U.S.C. §704.